IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 357 of 2002
with
CRIMINAL REVISION APPLICATION NO.358 of 2002
with
CRIMINAL REVISION APPLICATION NO. 359 of 2002
with
CRIMINAL REVISION APPLICATION NO. 413 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MALJIBHAI J RABARI & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR CL SONI for Applicant(s) : 1 - 4.
Mr.Mukesh A.Patel,A.P.P. for Respondent(s) : 1,
MR SK PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 27/06/2007

ORAL JUDGMENT

1. Crimiinal Revision Applications nos.357/2002, 358/2002 and 359/2002 have been filed by the applicants-accused challenging the common judgment and order dated 30th August,2002 passed by the learned Sessions Judge, District Banaskantha at Himatnagar in order below Exh.1 preferred by the respondent no.2 in Criminal Misc.Applications nos.55/00, 134/00, 135/00 and 39/2001 whereby the learned Judge ordered the transfer of Criminal Case nos.2625/1994, 925/1997 and 3590/1994 pending before the learned J.M.F.C.Court at Modasa to the J.M.F.C.Court at Khedbrahma whereas Criminal Revision Application no.413/2002 has been preferred by the complainant whose application for transfer of Criminal Case no.2862/94 came to be rejected.

1.1 Since question involved as also the facts are common in all these Criminal Revision Applications which arise out of the said common order, with the consent of the learned Advocates for the parties, the same are taken up together and being disposed of by this common judgment.

2. It is the case of the applicants in all these Criminal Revision Applications that the respondent no.2-original complainant lodged different complaints against which different Criminal Cases came to be registered against the applicants-accused who are relatives as detailed below:

(i) II Cr.no.85 of 1994 before Modasa Rural Police Station for the alleged offences under Secs. 506(2), 504, 114 of the Indian Penal Code, Sec.161 and 162 Village Panchayats Act and Sec.135 of the .P.M.C.Act.wherein accused is M.J.Rabari.Advocate. (Criminal Case no.2625/1994).

(ii) II Cr.no.183 of 1994 before Modasa Police Station for the alleged offences under Secs.506(2), 504, 114 of the Indian Penal Code, Sec.161 and 162 of the Village Panchayats Act and Sec.135 of the Bombay Police Act. The accused is cousin of Advocate Shri M.J.Rabari. (Criminal Case no.3596/1994)

(iii) II Cr.no.32 of 1997 before Modasa Police Station for the alleged offences under Secs.506(2), 504, 114 of the Indian Penal Code and Secs.161 and 162 of the Village Panchayats Act. The accused is the brother of Advocate M.J.Rabari. (Criminal Case no.925/1997)

(iv) Criminal Case no.2862 of 1994 pending with learned J.M.F.C.Modasa for alleged offence under Sec.392, 504, 506(2) and 114 of the Indian Penal Code, and Sec.135 of the Bombay Police Act. The accused are the relatives of Advocate M.J.Rabari.

3. The grievance voiced by the respondent no.2-original complaint in each of these applications is that the applicants-accused who are Advocate M.J.Rabari, his brother , cousin and relatives had damaged the standing crops of the respondent no.2-

original complainant. The respondent no.2 had moved Criminal Misc. Applications bearing nos.55/2000, 134/2000, 135/200 and 39/2001 under Section 408 of the Criminal Procedure Code for transfer of the aforesaid criminal cases from Modasa Court to any other Court in the District Sabarkantha at Himatnagar,on the ground that the applicants-accused are head strong persons and as such the respondent no.2 would not get justice if the case is tried at Modasa. All these four applications were heard together and decided by the learned Sessions Judge by order dated 30-8-2002 below Exh.1 whereby the learned Sessions Judge, District Sabarkantha at Himatnagar, ordered transfer of Criminal Case nos.2625/1994, 925/1997 and 3596/1994 which is the subject matter of challenge in Criminal Revision Applications nos.357/2002, 358/2002 and 359/2002 whereas by way of Criminal Revision Application no.413/2002, the respondent no.2 -original complainnt whose application for transfer of Criminal Case no.2862/1994 came to be rejected challenges the same.

4. Heard learned Counsel Mr. C.L.Soni for the applicants-accused, learned A.P.P. Mr. Mukesh A.Patel_for the respondent no.1-State and learned Advocate Mr. S.K.Patel, for the respondent no.2 in Criminal Revision Applications nos.357/2002, 358/2002 and learned Counsel Mr.C.L.Soni for the petitioner and learned A.P.P. Mr. Mukesh A. Patel for the State in Criminal Revision Application no.359/2002 while in Criminal Revision Application no.413/2002

Mr. S.K. Patel , learned Advocate for the petitioner and learned A.P.P. Mr. Mukesh A. Patel.

5. Learned Counsel Mr. C.L.Soni for the applicants accused in the respective Criminal Revision Applications has submitted that the Court of learned Judicial Magistrate, First Class, Khedbrahma where the Criminal Cases have been transferred is too far from Modasa and that the present applicants-accused would be put to an embarrassing situation if they are to remain present in the Court at Khedbrahma. According to the learned Counsel, considering the distance from Modasa to Khedbrahma, with a view to enable the applicants-accused to remain present in the Court without much difficulty, the Criminal Cases may be transferred from Modasa to Edar.

6. Learned Counsel for the respondent no.2 as also the learned A.P.P. have however, conceded to the suggestion made by the learned Counsel for the applicants-accused for transfer of the criminal cases from Modasa to Edar.

7. This Court has gone through the order dated 30th August, 2002 whereby criminal cases, as stated above, have been transferred from Modasa to Khedbrahma in the light of the submissions made by the learned Counsel for the respective parties. Considering the fact that the learned Counsel Mr. S.K.Patel

for the respondent no.2 has fairly conceded to the request made by the learned Counsel for the applicants-accused, without going into the merits of the matter, in the interest of justice, the order dated 30th August, 2002 passed by the learned Sessions Judge, Sabarkantha at Himatnagar is required to be modified to the extent that the three Criminal Cases nos.2625/1994, 925/1997 and 3596/1994 are required to be transferred from Modasa to Edar.

8. As far as Criminal Revision Application no.413/2002 is concerned, the learned Sessions Judge, Sabarkantha, vide the order under challenge has rejected the application of the complainant for transfer of Criminal Case no.2862/1994 on the ground that the accused Maljibhai J. Rabari , Advocate is not a party. It is pertinent to note that in another Criminal Case even though Maljibhai J.Rabari is not a party but his relatives were party that criminal case was transferred from Court of the learned of learned J.M.F.C., Modasa to the Court of learned J.M.F.C. Khedbrahma. In that view of the matter, and also considering the fact that the learned Counsel for the parties had consented, Criminal Case no.2862/1994 is also required to be transferred from the Court of learned J.M.F.C, Modasa to the Court of learned J.M.F.C., Edar.

9. As a result of the foregoing discussion, Criminal Revision Applications nos.357/1994, 358/1994 and 359/1994 are partly allowed. Criminal Cases nos. 2625/1994, 925/1997 and 3596/1994

are ordered to be transferred from the Court of learned J.M.F.C., Modasa to the Court of learned J.M.F.C., Edar.

Criminal Revision Application no.413/2002 is also allowed. Criminal Case no.2862/1994 is ordered to be transferred from the Court of learned J.M.F.C., Modasa, to the Court of learned J.M.F.C., Edar. Rule is made absolute to the extent indicated herein above in each of these Criminal Revision Applications.

(M.D.Shah,J.)

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